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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF	)	
<b>ALAN N. BYBEE</b>	)	STIPULATION AND ORDER
TO PRACTICE AS A	)	
PHYSICIAN ASSISTANT AND TO	)	CASE NO DOPL 2008- <b>97</b>
ADMINISTER AND PRESCRIBE	)	
CONTROLLED SUBSTANCES	)	
IN THE STATE OF UTAH	)	

**ALAN N. BYBEE** ("Respondent") and the **DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING** of the Department of Commerce of the State of Utah

("Division") stipulate and agree as follows

1 Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action

2 Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily

3 Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter

4 Respondent understands that Respondent is entitled to a hearing before the State of Utah's Physician Assistant Licensing Board ("the Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses Respondent acknowledges that by executing this document Respondent hereby waives the right to a hearing and any other rights to which Respondent may be entitled in connection with said hearing

5 Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter

6 Respondent acknowledges that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's licenses, to other persons and entities

7 Respondent admits the following facts are true

- a Respondent was first licensed as a physician assistant in the State of Utah on or about October 17, 1984
- b Between September 2006 and November 2007 Respondent issued hundreds of prescriptions for controlled substance (including but not limited to hydrocodone, oxycodone, Provigil, and Lyrica) and legend drugs to ten of his patients at a clinic in Ogden, Utah where Respondent is employed, without documenting the prescription in the patient's medical chart and without documenting sufficient need for the prescription in the patient's medical chart

- c Between September 2006 and November 2007 Respondent knowingly prescribed excessive amounts of controlled substances, including hydrocodone and oxycodone, on multiple occasions, to his patients without a proper diagnosis indicating use of that controlled substance in the amounts prescribed and provided by Respondent Respondent also failed on those multiple occasions to take into account the controlled substances potential for abuse, the possibility the controlled substances would lead to dependence, the possibility the patient was obtaining the controlled substance for a nontherapeutic use, or to distribute the controlled substance to others
- d Respondent's supervising physician, S B (identity withheld for purposes of confidentiality), with whom Respondent practices under pursuant to a delegation of services agreement, does not practice pain management and is not specially trained in the practice of pain management Respondent's excessive prescribing of controlled substances as described above was not within Respondent's skills and scope of competence, not within the usual scope of practice of Respondent's supervising physician, and not in accordance with the delegation of services agreement between Respondent and Respondent's supervising physician S B
- e Between September 2006 and November 2007 Respondent failed, on multiple occasions, to prescribe controlled substances, including hydrocodone and oxycodone, according to the Model Policy for the Use of Controlled Substances for the Treatment of Pain, 2004, established by the Federation of State Medical Boards
- f Respondent was warned by a Division investigator in about August 2005 about prescribing controlled substances without sufficient medical need demonstrated by the patients to whom the controlled substances were issued

8 Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a), § 58-70a-501(1) and (2), § 58-70a-503(2) and (4), Utah Administrative Code R156-1-502(2) and (6), R156-37-602(1), and R156-37-603(2), and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a) Respondent agrees that an Order, which constitutes disciplinary action against Respondent's license by the Division pursuant to Utah

Administrative Code R156-1-102(7) and Utah Code Ann § 58-1-401(2), shall be entered in this matter as follows

- (1) Respondent's licenses shall be revoked. Those revocations shall be immediately stayed. Respondent's license to prescribe and administer controlled substances shall be suspended until Respondent successfully completes the prescribing course set forth in subparagraph 8(1)(g) below. Respondent's licenses shall be subject to a term of probation for a period of three years. The period of probation shall commence on the effective date of this Stipulation and Order, which is the date the Division Director signs the Order. During the period of probation, Respondent's licenses shall be subject to all of the following terms and conditions. If the Board or Division later deems any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Division.
  - (a) Respondent shall, at his own expense, practice only under the direct supervision of a Division and Board pre-approved supervising physician ("supervisor") during the term of Respondent's probation. Any changes in supervision may be made only with the consent of the Division and Board. Respondent shall deliver a copy of this Order to Respondent's supervisor (prior to the establishment of the supervisory relationship or within ten days of the effective date of this Stipulation and Order if the relationship is already established) and cause Respondent's supervisor to notify the Division in writing that a copy has been received.
  - (b) The supervisor shall review all prescriptions issued by Respondent and all records for patients in which any controlled substance or legend drug has been administered by Respondent.
  - (c) Respondent shall cause Respondent's supervisor to submit reports to the Board and Division assessing Respondent's compliance with the terms of Respondent's probation and ethics. The reports shall be submitted monthly for the first six months and quarterly thereafter, or at such frequency as directed by the Board and Division. The receipt of an unfavorable report may be considered to be a violation of probation.
  - (d) If Respondent is not currently employed in Respondent's licensed profession, Respondent shall submit the supervisor report form on the date it is due and indicate on the form that Respondent is not currently employed in Respondent's licensed profession, or that Respondent is not currently working.

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- (e) Respondent shall notify any employer of Respondent's restricted status and the terms of this Stipulation and Order. Respondent shall provide a copy of this Stipulation and Order to Respondent's employer and cause Respondent's employer to acknowledge to the Division and Board in writing that a copy of the Order has been provided to the employer. The employer shall submit employer reports to the Division and Board on a monthly basis for the first six months and quarterly thereafter, or at such frequency as directed by the Division or Board. The employer shall write the Division and indicate whether the employer will provide the periodic employer reports.
  - (f) Respondent shall not supervise other medical professionals or students.
  - (g) Respondent shall successfully complete two additional professional education courses, pre-approved by the Board and Division, focused on proper prescribing and proper documentation and record-keeping. The two additional courses shall be completed within one year from the effective date of this Stipulation and Order. The two additional courses shall not count toward the regular continuing professional education requirement for license renewal. Respondent shall provide documentation to the Division and Board of successful completion of the two courses.
  - (h) Respondent shall issue controlled substance prescriptions only on sequentially numbered triplicate prescription forms. The triplicate copies of all such prescriptions shall be provided to the Division monthly by Respondent.
  - (i) Respondent shall maintain a log documenting all controlled substances that Respondent directly administered to patients or used in conjunction with any treatment or procedure of Respondent's practice. The log shall document the name of the patient to whom the controlled substance was administered or used, the procedure performed, the date of administration or use, the type of medication used, and the amount of medication used. The information recorded in the log shall also be documented in the patient chart. Respondent shall present this log to the Board for its review at each quarterly meeting or as otherwise directed.
  - (j) Respondent shall notify the Division and Board within one (1) week of any change of employer or employment status. This is required regardless of whether Respondent is employed in Respondent's licensed occupation. The notification shall be in writing.
  - (k) Respondent shall meet with the Board and Division within thirty (30) days

of signing of the accompanying Order and on a quarterly basis, or at other greater or lesser frequency as determined by the Board and Division for the duration of the probationary period thereafter to assess the progress of Respondent's probation. Respondent shall meet with the Board and Division at the first scheduled Board meeting after the effective date of the Order with a plan for Respondent's probation, including the name(s) of evaluator(s).

- (l) Respondent shall limit Respondent's practice in accordance with the terms of probation, unless the Division and the Board authorize changes.
- (m) In the event that Respondent leaves Utah for a period longer than 60 days, Respondent shall notify the Division and the Board in writing of the dates of departure and return. The licensing authorities of the jurisdiction to which Respondent moves must be promptly notified of the provisions of this Stipulation and Order. Periods of residency or practice outside Utah may apply to the reduction of the probation period if the new state of residency places Respondent's license on probation with equal or greater terms and conditions.
- (n) Periods of unemployment or employment in other fields of practice shall be reported by Respondent to the Division and shall not count toward completion of probation. Should Respondent not be employed in Respondent's licensed occupation during Respondent's probationary period for a consecutive period of more than sixty (60) days, that period shall not apply to the reduction of probation, though the terms of probation shall remain applicable. If the Respondent works less than full-time in Respondent's licensed occupation, the reduction of any remaining probationary time shall occur on a pro-rata basis, in relation to a full-time position of 40 hours worked per week.
- (o) Should other acts of unprofessional conduct come to the attention of the Division or Board which have occurred prior to the entry of the Order in this case or should Respondent violate probation in any respect, the Division may, in addition to taking action as provided for herein, after giving Respondent notice and the opportunity to be heard, revoke probation or impose sanctions in accordance with applicable law.
- (p) If a petition is filed against Respondent during Respondent's probation, the period of probation shall be extended until the matters alleged in the petition are fully resolved.
- (q) Respondent shall immediately notify the Division, in writing, of any

changes in private or professional address and agrees that written communication by the Division and/or the Board shall be mailed to Respondent at the last address provided to the Division via first class U S Mail, and shall constitute notice to Respondent

- (r) Failure to pay for any of the costs associated with this probation shall be considered a violation of this Order Respondent further agrees to complete all conditions of probation in a timely manner Where a specific time for completion is not stated in this Order, it shall be within the Division and Board's discretion to set a time for completion
- (s) Respondent agrees to keep Respondent's Utah licenses current during the period of probation
- (t) Respondent shall notify the Division immediately if Respondent is charged or arrested with any criminal conduct and understands that a conviction is a violation of this agreement
- (u) Respondent shall read the Model Policy for the Use of Controlled Substances for the Treatment of Pain, 2004, established by the Federation of State Medical Boards, and discuss it with the Board and Division at Respondent's first meeting with the Board

9 This Stipulation and Order, upon approval by the Director of the Division, shall be the final compromise and settlement of this non-criminal administrative matter. Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or prejudgment Respondent might have with regard to the Director by virtue of her having reviewed this Stipulation, and this waiver shall survive such nullification

10 Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice

11 This document constitutes the entire agreement between the parties and supersedes

and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation.

12. The terms and conditions of this Stipulation and Order become effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order. Respondent shall complete all the terms and conditions contained in the Stipulation and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board. Failure to complete a term or condition in a timely manner shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

13. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

14. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.



DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING

BY   
NOEL TAXIN  
Bureau Manager

DATE 5/8/08

MARK L. SHURTLEFF  
ATTORNEY GENERAL

BY   
L. MITCHELL JONES  
Counsel for the Division

DATE 8 May 2008

RESPONDENT

BY   
ALAN N. BYBEE


DATE 5/5/08

**ORDER**

THE ABOVE STIPULATION, in the matter of **ALAN N. BYBEE**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 9 day of May, 2008

DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

  
F. DAVID STANLEY  
Director

Investigator Vince Garcia